No. 86-1639

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

FLOYD H. VINSON - - - - - Petitioner

versus

FORD MOTOR COMPANY - - - Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BROADUS AND SAMUEL
ARTHUR R. SAMUEL
1810 One Riverfront Plaza
Louisville, Kentucky 40202
(502) 587-6516
Counsel for Petitioner

April 8, 1987

WESTERFIELD-BONTE CO., 619 W. KENTUCKY—P.O. BOX 3251, LOUISVILLE, KY.

QUESTION PRESENTED

Whether stating a charge in the EEOC interview statement was sufficient to constitute "filing a charge" pursuant to 29 U.S.C. §626(d) of the Age Discrimination in Employment Act where the EEOC failed to restate the charge on the formal complaint form, which the Petitioner was not shown and he did not sign.

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H.R. Conf. Rep. No. 950, 95th Cong., 2nd Sess. 533-34 (1978), reprinted in 1978 U.S. Code Cong. & Admin. News 534 4

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

No. _____

FLOYD H. VINSON - - - - - - *Petitioner*

v.

FORD MOTOR COMPANY - - - - *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

OPINIONS BELOW

The judgment based on a jury finding of willful discrimination and award of damages was entered on January 17, 1985 in the District Court. The judgment n.o.v. setting aside the judgment entered on January 17, 1985 and dismissing the plaintiff's action was entered on October 2, 1985. The opinion of the Sixth Circuit Court of Appeals affirming (2-1) was decided and filed December 3, 1986 and recommended for publication. The order denying the petition for rehearing, en banc, was filed January 16, 1987. The mandate was issued January 27, 1987. Copies of the abovementioned judgments, opinions, and mandate are contained in the Appendix.

JURISDICTION

Judgment was entered in the District Court on January 17, 1985. Judgment n.o.v. was entered upon

timely motion on October 2, 1985. An opinion of the Court of Appeals from a timely appeal was filed on December 3, 1986. A timely petition for rehearing, en banc, was denied and filed January 16, 1987. The mandate issued January 27, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

The statutory provision involved is the Age Discrimination in Employment Act, 28 U.S.C. §623 (1982).

Section 626(d) provides "No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission."

STATEMENT OF THE CASE

Petitioner spoke with an EEOC interviewer who prepared an "Employee Personal Interview Statement" (See Exhibit "A" in Appendix) in which Petitioner complained of a demotion because of age. Petitioner signed this statement. It was dated January 17, 1980.

Without petitioner's knowledge or signature, a "Charge of Discrimination" was prepared by an EEOC official which did not mention the demotion. Instead, it spoke only of a denial of promotion. (See Exhibit "B" in Appendix). Some two years later petitioner saw this document for the first time during a deposition.

REASON FOR GRANTING THE WRIT

The reason for granting the writ is that the Court of Appeals (6th Circuit) rendered a decision in conflict with rulings of this Court.

A clear and uniform standard must be stated to guide the EEOC and Courts in what constitutes "filing a claim" under the Age Discrimination in Employment Act.

The petitioner adopts the dissenting opinion of Judge Merritt, Circuit Judge for this case in the Court of Appeals, for its argument. He wrote:

> The requirement of "filing a charge" under Section 626(d) should be construed broadly in light of the statutory purpose of the Act and the legislative history of this particular provision. Numerous cases have held that the Act is a broad remedial statute and should be construed liberally. *See, e.g., Oscar Mayer & Co.* v. *Evans,* 441 U. S. 750, 765 (1979) (Blackmun, J., concurring); *Dartt* v. *Shell Oil Co.,* 539 F. 2d 1256, 1260 (10th Cir. 1976) (the Act is "remedial and humanitarian legislation and should be liberally interpreted to effectuate the congressional purpose of ending age discrimination in employment"), *aff'd per curiam,* 434 U. S. 99 (1977); and *Holliday* v. *Ketchum, MacLeod & Grove, Inc.,* 584 F. 2d 1221, 1229-30 (3rd Cir. 1978) (courts should liberally construe statute and be "chary about creating unnecessary procedural bars which may, at the outset, require the dismissal of otherwise meritorious age discrimination claims"). The Supreme Court has also stated that the purposes of the Act should

> not be frustrated by procedural technicalities. *See Love* v. *Pullman Co.*, 404 U. S. 522, 527 (1972) ("Such technicalities are particularly inappropriate in a satutory scheme in which laymen, unassisted by trained lawyers, initiate the process.")

The legislative history of Section 626(d) reinforces the view that this provision is to be construed broadly. The Congressional conference report relating to the 1978 amendments to the Act explicitly identifies the purpose of Section 626(d):

> . . . the basic purpose of the notice requirement . . . is to provide the Department [of Labor] with sufficient information so that it may notify prospective defendants and to provide the Secretary with an opportunity to eliminate the alleged unlawful practices through informal methods of conciliation. Therefore, the conferees intend that the "charge" requirement will be satisfied by the filing of a written statement *which identifies the potential defendant and generally describes the action believed to be discriminatory.* (emphasis added)

H.R. Conf. Rep. No. 950, 95th Cong., 2nd Sess. 533-34 (1978), *reprinted in* 1978 U. S. Code Cong. & Admin. News 534.

In light of the statutory purpose and legislative history, I believe that Vinson did "file a charge" for purposes of Section 626(d). Vinson should not be held to a higher standard than a pro se litigant in federal court insofar as pleading requirements. Under notice pleading, a pro se litigant would not be required

to specify each transaction as issue; complaining of the overall wrongful conduct would be sufficient.

Vinson mentioned the 1979 demotion in the employee personal interview statement with the EEOC. Under the notice pleading analogy, this should be sufficient to constitute "filing a charge" with respect to the 1979 demotion. Such a construction is consistent with the requirements that courts broadly construe the Act. Moreover, it is supported by the particular legislative history of Section 626(d). In sum, if the statutory scheme is to work as Congress intended, then a layman such as Vinson must not be barred from bringing age discrimination actions under the Act by mere technicalities."

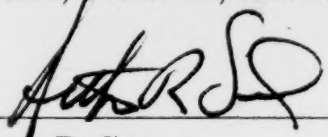
Respectfully submitted,

ARTHUR R. SAMUEL
BROADUS AND SAMUEL
Louisville, Kentucky 40202
1810 One Riverfront Plaza
(502) 587-6516

Counsel for Petitioner

CERTIFICATE OF SERVICE

I, Arthur R. Samuel, counsel for petitioner, certify that the attached Petition for Writ of Certiorari and Letter of Appearance was served on respondent by depositing copies of the aforementioned documents in the United States mail, first-class postage prepaid, on 4/8/87 addressed to respondent's counsel, Hon. Jon L. Fleischaker and Kemberly Greene, Citizens Plaza, Louisville, Kentucky 40202.



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Counsel for Petitioner

APPENDIX

COURT OF APPEALS UNITED STATES

FOR THE SIXTH CIRCUIT

No. 85-5976

FLOYD H. VINSON, - - - *Plaintiff-Appellant,*

v.

FORD MOTOR COMPANY, - - *Defendant-Appellee.*

JUDGMENT—Filed December 3, 1986

ON APPEAL from the United States District Court for the Western District Kentucky.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said District Court in this case be and the same is hereby affirmed.

It is further ordered that Defendant-Appellee recover from Plaintiff-Appellant costs on appeal, as itemized below, and that execution therefor issue out of said District Court, if necessary.

Entered By Order of the Court

John P. Hehman, Clerk

(s) John P. Hehman
Clerk

Issued as Mandate: 1/27/87

A True Copy.

Attest:

(s) Michelle D. Main
Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 85-5976

FLOYD H. VINSON, - - - *Plaintiff-Appellant,*

v.

FORD MOTOR COMPANY, - - *Defendant-Appellee.*

ORDER—Filed January 16, 1987

BEFORE: MERRITT, GUY and NORRIS, Circuit Judges.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of the Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

Entered by Order of the Court

(s) John P. Hehman
John P. Hehman, Clerk

RECOMMENDED FOR FULL TEXT PUBLICATION
See Sixth Circuit Rule 24

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 85-5976

FLOYD H. VINSON, - - - *Plaintiff-Appellant,*

v.

FORD MOTOR COMPANY, - - *Defendant-Appellee.*

On Appeal from the United States District Court for the Western District of Kentucky

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Decided and Filed December 3, 1986

Before: MERRITT, GUY, and NORRIS, Circuit Judges.

GUY, Circuit Judge, delivered the opinion of the court, in which NORRIS, Circuit Judge, joined. MERRITT, Circuit Judge, (pp. 4-6) delivered a separate dissenting opinion.

GUY, Circuit Judge, Plaintiff appeals the entry of judgment notwithstanding the verdit in favor of defendant after a jury trial on his age discrimination claim. For the reasons stated below, we affirm.

Plaintiff is a long-term employee of the Ford Motor Company's Louisville Assembly Plant in Kentucky. In January, 1980, plaintiff filed a complaint with the EEOC alleging age discrimination. The interview with the EEOC indicates that plaintiff complained about a series of events beginning in November, 1977. Included was the fact that in January, 1979, plaintiff had been demoted. The interview sheet ended by plaintiff claiming that

> [i]n April 1979 I was promised by Joe Weingart, Material Manager, that I would be placed in the position of Parts Control and volume scheduling manager, a job I am qualified and held previously for three years. On 1-16-80 this job was assigned to Al Pierce, age 35-36 years old, no experience and less time with the Co.

The charge, as framed by the EEOC, stated: "I believe I were (sic) denied a promotion because of my age."

Plaintiff filed suit in April, 1982, alleging discrimination in violation of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 623, asserting that (1) he was demoted in January, 1979, because of his age, and (2) he was denied a promotion in January, 1980, because of his age. Before trial, defendant moved for summary judgment as to the 1979 demotion, arguing that plaintiff had never filed an administrative complaint concerning the demotion, and therefore, he had failed to comply with a jurisdictional prerequisite for filing a civil action under ADEA. 29 U.S.C. § 626(d). The trial court denied defendant's motion, noting that plaintiff had referred to the demotion in his interview statement with the EEOC. The case was tried to a jury from January 7 to January 11, 1985. The jury found for plaintiff on his 1979 demotion claim, but against plaintiff on his 1980 failure to promote claim. The jury awarded $2,057.16 for lost wages as a result of the demotion, and also awarded liquidated damages on that claim, for a total award of $5,014.32.

After trial, defendant moved for n.o.v., reasserting the same claims presented in its motion for summary judgment. The court, based on the evidence at trial, this time sustained defendant's motion, finding that, in fact, plaintiff did not file any charge of age discrimination concerning the 1979 demotion with the EEOC or any administrative

agency. Accordingly, the court determined that it was without jurisdiction as to that claim.

It is well settled that the filing of a charge with the EEOC is a jurisdictional prerequisite to the filing of a civil action under ADEA. *Oscar Mayer & Co.* v. *Evans*, 441 U.S. 750 (1979); 29 U.S.C. § 626(d). Moreover, when jurisdiction is challenged, the burden of establishing jurisdiction lies with the party asserting it. The only evidence to support plaintiff's contention that he complained about the 1979 demotion in relation to his age discrimination claim is the interview statement of the EEOC. However, in that statement plaintiff complained about a series of events, the demotion being one of many, which culminated in plaintiff's belief that he had been discriminated against based on age when he was denied a promotion in 1980. Plaintiff does not indicate that these other incidents were other than historical background relative to the specific EEOC charge filed. Furthermore, plaintiff presented no evidence as to the scope of the investigation conducted by the EEOC. The court thus had no way of knowing whether the EEOC attempted to conciliate the demotion claim. Conciliation is an important purpose of the requirement that a claimant first file with an administrative agency. Finally, we note that the requirement that a claimant file a charge which identifies the conduct he believes is discriminatory is not a hypertechnical legal prerequisite. All plaintiff was required to do was identify that conduct which he felt was the result of age discrimination. It does not constitute an unjustifiable burden on claimants to require them to specify each such event. And it is necessary, if the administrative process is to work, that a claimant so articulate his beliefs. Accordingly, the district court did not err in granting judgment n.o.v. in favor of defendant.

In view of our disposition of this claim, we need not discuss other issues raised by plaintiff. The judgment of the district court is AFFIRMED.

MERRITT, Circuit Judge, dissenting. The issue in this case, which arises under the Age Discrimination in Employment Act, 29 U.S.C. § 623 (1982), is whether plaintiff complied with a jurisdictional prerequisite for bringing an age discrimination action. Unlike the majority, I believe that plaintiff did comply with 29 U.S.C. § 626(d), and I therefore dissent.

Section 626(d) provides in pertinent part: "No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission." The question on appeal is whether plaintiff's actions were sufficient to constitute "filing a charge" under this provision of the Act with respect to plaintiff's 1979 demotion.

The requirement of "filing a charge" under Section 626(d) should be construed broadly in light of the statutory purpose of the Act and the legislative history of this particular provision. Numerous cases have held that the Act is a broad remedial statute and should be construed liberally. *See, e.g., Oscar Mayer & Co.* v. *Evans*, 441 U.S. 750, 765 (1979) (Blackmun, J., concurring); *Dartt* v. *Shell Oil Co.*, 539 F. 2d 1256, 1260 (10th Cir. 1976) (the Act is "remedial and humanitarian legislation and should be liberally interpreted to effectuate the congressional purpose of ending age discrimination in employment"), *aff'd per curiam*, 434 U.S. 99 (1977); and *Holliday* v. *Ketchum, MacLeod & Grove, Inc.*, 584 F. 2d 1221, 1229-30 (3rd Cir. 1978) (courts should liberally construe statute and be "chary about creating unnecessary procedural bars which may, at the outset, require the dismissal of otherwise meritorious age discrimination claims"). The Supreme Court has also

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In light of the statutory purpose and legislative history, I believe that Vinson did "file a charge" for purposes of Section 626(d). Vinson should not be held to a higher standard than a pro se litigant in federal court insofar as pleading requirements. Under notice pleading, a pro se litigant would not be required to specify each transaction as issue; complaining of the overall wrongful conduct would be sufficient.

Vinson mentioned the 1979 demotion in the employee personal interview statement with the EEOC. Under the

notice pleading analogy, this should be sufficient to constitute "filing a charge" with respect to the 1979 demotion. Such a construction is consistent with the requirements that courts broadly construe the Act. Moreover, it is supported by the particular legislative history of Section 626(d). In sum, if the statutory scheme is to work as Congress intended, then a layman such as Vinson must not be barred from bringing age discrimination actions under the Act by mere technicalities.

Accordingly, I dissent.

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action C 82-0240-L(A)

FLOYD H. VINSON, - - - - - - - *Plaintiff,*

v.

FORD MOTOR COMPANY, - - - - - *Defendant.*

JUDGMENT—Entered October 2, 1985

This action, having been tried before a jury from January 7, 1985 through January 11, 1985, and the Court, having entered a judgment pursuant to jury responses to special interrogatories awarding plaintiff the sum of $5,014.32 with interest, and the defendant having moved for a judgment notwithstanding the verdict, and plaintiff having moved for promotion to a grade 10 and front pay, and the Court having considered the motion and being fully advised in the premises,

IT IS ORDERED AND ADJUDGED that the motion for judgment notwithstanding the verdict be and hereby is sustained, and plaintiff's motions are denied, and the judgment entered on January 17, 1985 is hereby set aside, and judgment is hereby entered for defendant, and the action filed by the plaintiff is dismissed with prejudice, defendant to recover its cost herein expended.

This is a final and appealable judgment, and there is no just cause for delay.

Dated _____

(s) Charles M. Allen
Charles M. Allen, Senior Judge

cc: Counsel of Record

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. C 82-0240 L(A)

FLOYD H. VINSON, - - - - - - - *Plaintiff,*

v.

FORD MOTOR COMPANY, - - - - *Defendant.*

JUDGMENT—Entered January 17, 1985

This action, having been tried by a Jury from January 7, 1985 through January 11, 1985 and the Jury, having filed its responses to special interrogatories,

IT IS ORDERED AND ADJUDGED that the plaintiff, Floyd H. Vinson, be awarded $5,014.32, with interest at the rate of 9.08% per annum from date of judgment until paid.

This is a final and appealable judgment and there is no just cause for delay.

Dated 1-17-85

(s) Charles M. Allen
Charles M. Allen, Chief Judge

cc: Counsel of Record

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. C 82-0240 L(A)

FLOYD H. VINSON, - - - - - - *Plaintiff,*

v.

FORD MOTOR COMPANY, - - - - *Defendant.*

PARTIAL SUMMARY JUDGMENT

Defendant, having moved for summary judgment as to all the claims advanced by the plaintiff, and the Court, having filed its memorandum opinion and being fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the motion of the defendant for summary judgment be and it is hereby denied, except as to plaintiff's complaint concerning his removal from his position on November 17, 1977.

This is not a final and appealable judgment.

Dated 5-3-83

(s) Charles M. Allen
Charles M. Allen
Chief Judge

cc: Counsel of Record

EXHIBIT "A" (copied)

EMPLOYEE PERSONAL INTERVIEW STATEMENT

01 17 80
(Date)
(Place of interview)

I, Mr. Floyd H. Vinson, Sr., of 3809 Debson Way, Louisville, Ky. 40222, (502) 426-6834, 45¾ years of age, have been employed by Ford Motor Co. Fern Valley Rd. for the approximate period from Nov. 1974 to Present. Prior to Louisville assignment 1964-74 Michigan Truck Plant as Sup. of Specifications and Audit—was Material Handling Manager.

Statement: I have been employed by Ford Motor Co. for the past 15½ years. In Nov. 1977 I began to experience problems on my job. I was 45 years old.

November 1977 I was removed from my position as a Material Handling Manager with no assignment until March 78. March of 78 I was given the assignment of Change over Coordinator. I was passed over for a 6% salary increase while in this position.

March 79 I was told that there were no job assignments for me unless I took a position of Specification and Audit Sup. This position subsequently caused me to be reduced two (2) grades in pay. In Dec. 79 I was told to turn in my lease car. Since that time I have received constant harassment by being passed over for open positions that would put me in the grade level I originally held. In April 1979 I was promised by Joe Weingart, Material Manager that I would be placed in the position of Parts Control and Vehicle Scheduling Manager, a job I am qualified and held previously for (3) three years. On 1-16-80 this job was assigned to Al Pierce, age 35-36 years old, no experience and less time with the co.

/s/ Floyd H. Vinson

EXHIBIT "B"
(PLEASE PRINT OR TYPE)

...VED BY GAO — 180541 (RO511) pires 1-31-81	CHARGE OF DISCRIMINATION IMPORTANT: This form is affected by the Privacy Act of 1974, see Privacy Act Statement on reverse before completing it.	...ARGE NUMBER(S) (AGENCY USE ONLY) ☐ STATE/LOCAL AGENCY ☒ EEOC 016-80-8026

...ual Employment Opportunity Commission and
(State or Local Agency)

...ME (Indicate Mr., Ms. or Mrs.)	HOME TELEPHONE NUMBER (Include area code)
Mr. Floyd H. Vinson	
REET ADDRESS	502-426-6834
3809 Debson Way	
TY, STATE, AND ZIP CODE	COUNTY
Louisville, Kentucky 40222	Jefferson

AM'ED IS THE EMPLOYER LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR OCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME. (If more than one list below).

AME	TELEPHONE NUMBER (Include area code)
Ford Motor Company	502-566-9511
TREET ADDRESS	CITY, STATE, AND ZIP CODE
Fern Valley Road	Louisville, Kentucky
AME	TELEPHONE NUMBER (Include area code)
TREET ADDRESS	CITY, STATE, AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON MY (Check appropriate box(es))

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☒ OTHER (Specify) Age

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year) 021680

THE PARTICULARS ARE

I believe I were denied a promotion because of my age .

I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures

I declare under penalty of perjury that the foregoing is true and correct

NOTARY — (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge information and belief

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day month and year)

EXHIBIT "B"